

Fundamentals of Mexican Corporate Authority and Governance

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Certain basic principles of corporate authority, governance and formality for Mexican companies are significantly different than for common law (e.g., US) corporate entities. As Mexico is a civil law country, its principles of actual and apparent corporate authority to bind a company are closer to continental European civil law jurisdictions. For instance, where officers and directors in US companies typically are granted relatively broad powers to represent the company by board resolution or bylaw, in a Mexican company, an individual must possess either a specific or a general power of attorney to represent and sign on behalf of the company.

Annual Meetings

By law, a Mexican company needs to hold at least one shareholder meeting annually to approve the annual accounts, the use of proceeds and to appoint the management board. This meeting must be held by April of each year to approve the accounts from the previous year. All Mexican companies are required to have a fiscal year ending December 31. Of course, a company's bylaws may require additional meetings. Meetings are held following a minimum 15 day notice issued by the president of the board or otherwise as the bylaws may require. If the bylaws permit, the annual meeting may take the form of a consent resolution. Foreign shareholders may grant proxies to attorneys or other representatives present in Mexico to vote the shares approving the accounts and other actions to be taken at the meeting. Certain shareholder meeting minutes must be in the form of a notarial document, formalized by a Mexican notary, i.e., stamped and registered in the notary's book. To be effective against third parties, the appointment of directors must be inscribed in the public registry, which is maintained by Mexican government authorities. The bylaws provide direction for governance procedures and may have further or other requirements beyond the minimum necessary to comply with the law.

Special Meetings

In addition to the one annual shareholder meeting required by law, a company must also hold a shareholder meeting to vote on the following matters: amendments to the bylaws, name change, nationality change, company type change, change of company term, dissolution, liquidation or winding up of the company, fixed capital increases or decreases, issue of preferred stock, and merger or spin-off of the company. Minutes of all special meetings relating to these matters must be formalized by a Mexican notary and inscribed in the public registry. Notice provisions for special shareholder meetings are the same as for the annual meeting, unless the bylaws provide otherwise. If the bylaws permit, special meetings may also be held by consent resolution. Proxies may also be granted to vote shares for a special meeting.

Proxies

The granting of proxies is an important and formalistic process in Mexico. If the underlying transaction or action to be approved requires notarization by a Mexican notary, the best practice is also to have the proxy notarized. If the proxy is granted by a non-Mexican shareholder, the proxy must be notarized and apostilled in the foreigner's jurisdiction, and then formalized by the Mexican notary. Individual Mexican notaries may impose somewhat different requirements as to the formalization of a proxy prior to notarizing it; for this reason it is best to contact the notary early to determine his/her requirements.

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Power of Attorney

Pursuant to the Mexican Civil Code, action taken on behalf of a Mexican company will be legally binding only if it is taken pursuant to a validly granted power of attorney (POA). POAs may be either general or specific, and may be issued as part of the company's articles or bylaws, or by separate written instrument. If an individual undertakes an action on behalf of the company for which he or she does not have a valid POA, the company is not legally bound by such action, and the individual may be held personally liable. The company can, but need not, ratify the action taken, which may cure a previous lack of authority. Importantly, foreigners may not use a POA in Mexico or act on behalf of a Mexican company with effect in Mexico unless they are residents of Mexico with an FM3 Visa.

There are five general categories of POAs in Mexico, covering the following activities:

- **Domain:** Sales of assets out of the ordinary course of business, mainly land, buildings, fixed assets, or other business assets not in the ordinary course of business.
- **Exchange:** Open bank accounts, sign checks, and acquire debt, loans, or lines of credit
- **Claims and Collections:** Present a demand or to defend against demands in court or before the other legal authorities (e.g. tax tribunals, etc.)
- **Acts of Administration:** Sign different kind of contracts: leases, supply contracts, contracts with service providers, training and all others except credit documents, money obligations and sales of assets under contract (which are governed solely by Domain and Exchange above).
- **Labor Administration:** Attend to legal matters with employees or workers before the proper authorities (e.g. Labor and Conciliation Board). This is a combination of Claims and Collections and Administration Acts granted to facilitate handling of labor matters.

A general POA allows the holder to use the power granted for any of the categories above with respect to any third party or authority; it would normally be granted to a high ranking officer in a trusted capacity. A specific POA gives the holder the right to exercise that power only with respect to the specific counterparty named in the POA. General POAs must be formalized by a Mexican notary; to be valid against third parties they must also be inscribed in the public registry. Specific POAs must be inscribed in the public registry only if the other party requires it.

Restrictions on each of these POAs can take many forms, depending on the level of control desired. For instance, a company could issue a specific power of attorney with respect to a specific transaction. Another common method is to limit the scope of the Exchange POA. For instance, the payroll clerk could be granted a POA to sign only payroll checks and no others, and only in accordance with the payroll figures approved by someone else. Another common approach is to limit the peso (or dollar) amount of the transaction in which the person may engage. This is normally based on position, and should be set high enough that he or she can carry out normal activities. A further approach is to require two signatures on certain activities or for amounts above a certain threshold, as a check and balance. A combination of the above is usually sufficient control for most foreign companies operating in Mexico.

If you have questions or need assistance with your operations in Mexico, please contact:

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